

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VIRGIL DOUGLAS RANDALL,

Petitioner,

v.

RICHARD J. DONOVAN
CORRECTIONAL FACILITY,

Respondent.

No. 2:23-cv-01480-DAD-KJN (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
HABEAS PETITION DUE TO
PETITIONER'S FAILURE TO COMPLY
WITH A COURT ORDER

(Doc. No. 8)

Petitioner Virgil Douglas Randall is a state prisoner proceeding *pro se* with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 1, 2023, the assigned magistrate judge screened the pending petition and found that it was deficient. (Doc. No. 3.) Petitioner was directed to file an amended petition addressing the noted deficiencies, as well as an affidavit in support of his request to proceed *in forma pauperis* or the appropriate filing fee, within thirty days. (*Id.* at 2.) Finally, petitioner was cautioned that his failure to comply with the order would result in a recommendation that this action be dismissed. (*Id.* at 3.)

On September 11, 2023, petitioner filed a first amended petition (Doc. No. 6) but did not file either an affidavit in support of his request to proceed *in forma pauperis* or the filing fee as

1 required by the August 1, 2023 order. Accordingly, on October 3, 2023, the magistrate judge
2 issued the pending findings and recommendations recommending that this action be dismissed
3 without prejudice due to petitioner's failure to comply with the court's order that he file an
4 affidavit in support of his request to proceed *in forma pauperis* or the appropriate filing fee.
5 (Doc. No. 8 at 1–2.)

6 The findings and recommendations were served upon petitioner and contained notice that
7 any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 2.) To date,
8 petitioner has not filed any objections and the time in which to do so has passed.

9 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
10 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
11 pending findings and recommendations are supported by the record and proper analysis.

12 Having concluded that the pending petition must be dismissed, the court also declines to
13 issue a certificate of appealability. A petitioner seeking writ of habeas corpus has no absolute
14 right to appeal; he may appeal only in limited circumstances. *See* 28 U.S.C. § 2253; *Miller-El v.*
15 *Cockrell*, 537 U.S. 322, 335–36 (2003). If a court denies a petitioner's petition, the court may
16 only issue a certificate of appealability when a petitioner makes a substantial showing of the
17 denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Where, as here, the court denies habeas
18 relief on procedural grounds without reaching the underlying constitutional claims, the court
19 should issue a certificate of appealability “if jurists of reason would find it debatable whether the
20 petition states a valid claim of the denial of a constitutional right and that jurists of reason would
21 find it debatable whether the district court was correct in its procedural ruling.” *Slack v.*
22 *McDaniel*, 529 U.S. 473, 484 (2000). In the present case, the court finds that reasonable jurists
23 would not find the court's determination that the pending petition must be dismissed without
24 prejudice to be debatable or wrong. Thus, the court declines to issue a certificate of appealability.

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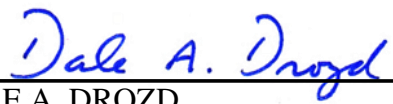
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Accordingly,

1. The findings and recommendations issued on October 3, 2023 (Doc. No. 8) are adopted in full;
2. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;
3. The court declines to issue a certificate of appealability; and
4. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: **December 11, 2023**



DALE A. DROZD
UNITED STATES DISTRICT JUDGE